

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BARBARA SCHWAB, et al.,

Plaintiffs,

v.

PHILIP MORRIS USA INC., et al.,

Defendants.

Civ. A. No. 04-1945 (JBW)

AFFIDAVIT OF DAVID W. STEWART

I, David W. Stewart, make the following declaration under penalty of perjury:

I. BACKGROUND AND EXPERTISE

1. I am the Robert E. Brooker Professor of Marketing in the Gordon S. Marshall School of Business at the University of Southern California. I have been a member of the faculty of the University of Southern California School of Business since June of 1986 and have served as Chairman of the Marketing Department and Deputy Dean in the Marshall School. Prior to joining the faculty at the University of Southern California, I was Associate Dean and Associate Professor of Marketing in the Owen Graduate School of Management at Vanderbilt University. I have also served as a research manager for a major advertising agency and have consulted for a variety of organizations on matters related to marketing, marketing research, marketing communications, marketing strategy and consumer behavior.

2. I hold three academic degrees in psychology: a B.A. from the University of Louisiana at Monroe, an M.A. in general experimental psychology from Baylor

**B. Empirical Evidence Regarding Differences
in the Meaning of the Word "Light"**

51. It cannot be the case that all smokers select light cigarettes because they are perceived to be a "safer" form of cigarette. Smokers for whom safety is a substantial factor in their decision about what product to smoke would be more likely to select ultra-light cigarettes rather than light cigarettes. Yet, ultra-lights have a very small share of the market. Different smokers might make different trade-offs, of course, with some smokers refusing to accept the taste of an ultra-light even if it provides lower amounts of tar and nicotine.⁷⁵ Given the fact that some smokers, including several of the named plaintiffs, continue to smoke "light" cigarettes in the face of broad dissemination of information about the hazards of light cigarettes,⁷⁶ there must be some association or benefit other than health that drives this decision.⁷⁷

52. There is substantial evidence that smokers do not share a common meaning of the term light with respect to cigarettes. A report of a survey prepared for Health Canada found that only 25% of smokers perceived light and mild cigarettes as safer and the perception that light and mild cigarettes are healthier was the main reason for switching to light or mild cigarettes among only 15% of the survey respondents and perception of a healthier cigarette is the main reason for continuing to use their current brand among only

⁷⁵ See, e.g., Deposition Testimony of Barbara Bishop, pp. 97, 214 (switched to Salem Light 100s purportedly because of health reasons, but never tried an Ultra Light cigarette); Deposition Testimony of David Rogers, pp. 157, 161 (switched from Marlboro Reds to Marlboro Lights purportedly because of health reasons, but never smoked Marlboro Ultra Lights).

⁷⁶ See Deposition Testimony of James LeRoy Sherman, p. 11 (currently smokes Marlboro Lights); Deposition of Barbara Bishop, p. 192 (currently smokes Misty Menthol Lights); Deposition Testimony of Barbara Schwab, pp. 52, 108 (currently smokes Ultra Lights); cf. Deposition Testimony of David Rogers, p. 37 (currently smokes Doral regulars).

⁷⁷ Borland, et al., "Use of and Beliefs About Light Cigarettes in Four Countries," p. S317.

12% of respondents.⁷⁸ This same survey found that only 31% of light and mild smokers perceived light cigarettes as having less toxic chemicals and only 14% believed they do less damage to health than full flavor cigarettes. The report observes: "For most smokers, L&M [light and mild] cigarettes were seen as damaging to health as regular cigarettes."⁷⁹ Further, if health is a substantial factor in the decision to smoke "light" cigarettes smokers should believe that the cigarette they smoke is safer than other cigarettes. In fact, there is evidence to the contrary in the Adult Use of Tobacco Survey that found that 68% of low tar cigarette smokers believed their own brand was as risky or more risky than other brands.⁸⁰

53. Differences in the perceptions and beliefs of smokers in the United States with respect to the meaning of light cigarettes is documented in surveys dating back at least thirty years. A survey conducted by the U.S. Department of Health, Education and Welfare in 1975 found that 41% of smokers believed all cigarettes are probably equally unhealthy or dangerous;⁸¹ a survey by the Centers for Disease Control in 1986 found that only 26% of light smokers believed their brand to be "less hazardous,"⁸² and a survey by the Gallup Organization in 1993 found that 42% of smokers disagreed or strongly disagreed with the statement that smoking low tar cigarettes was safer.⁸³

⁷⁸ Final Report, Canadian Opinion on the Removal of L and M Labels from Cigarette Packages: A Survey of Smokers and Non-Smokers, Prepared for Health Canada Tobacco Control Programme, (March 2003), p. 1 (Ex. 29).

⁷⁹ *Ibid.*, p. 6.

⁸⁰ Centers for Disease Control and Prevention, "Adult Use of Tobacco Survey," Public Use Data Tape, 1986, as reported in Giovino et al., "Attitudes, Knowledge, and Beliefs about Low-Yield Cigarettes Among Adolescents and Adults," *Smoking and Tobacco Control (Monograph 7)*.

⁸¹ U.S. Department of Health, Education and Welfare, "1975 Adult Use of Tobacco," at II-40 (June 1976) (Ex. 2-K).

⁸² CDC, Adult Use of Tobacco Survey, 1986.

⁸³ Thomas and Larsen (1993), Gallup Poll on Smoking Prevalence, Beliefs, and Activities, p. 61.

54. More recent empirical evidence continues to demonstrate that smokers possess no uniform shared meaning for the term "light" as it relates to cigarettes. A paper published in Addictive Behavior in 2001 reported that a survey conducted in 1999 found that only 31% of light cigarette smokers believed that light cigarettes are safer than regular cigarettes;⁸⁴ a paper published in Nicotine and Tobacco Research in 2004 reported that a 2002 survey found that only 28% of U.S. smokers agreed with the statement that "light cigarettes are less harmful than regular cigarettes,"⁸⁵ and a report on the results of eight focus groups prepared for Health Canada found that the label "light" had as many as a dozen different interpretations among smokers and the meaning varied by brand: (1) less tar and nicotine than regular, (2) less harmful than regular, (3) as harmful as regular, (4) lighter taste (not as strong), (5) better for your throat (smoother, less harsh), (6) less tobacco taste, (7) less immoral, (8) less addictive, (9) more addictive (you smoke more), (10) feel less guilty, (11) false sense of security, and (12) use different filter and paper.⁸⁶ This report also concluded that health did not appear to be the primary reason for choosing light and mild brands and the label light and mild was seen as a part of the brand name that helped in the cigarette selection process. "To the majority of respondents..., the words light/mild on cigarette packages had little or no relation to information on toxins."⁸⁷

⁸⁴ Lynn T. Kozlowski, et al., "Persistent Effects of a Message Counter-Marketing Light Cigarettes," Addictive Behavior, 2001, 26, 447-452 (Ex. 2-CC).


⁸⁵ Borland, et al., "Use of and Beliefs About Light Cigarettes in Four Countries," p. 316.

⁸⁶ Final Report, Canadian Opinion on the Removal of L and M Labels, (Feb. 2003), p. 22.

⁸⁷ *Ibid* p. 25.

information environment that will change even the same consumer over time. They have different family, friends and social relationships that will influence decisions about smoking. They have different retail experiences, have been exposed to different media, had attended different schools and have different health care experiences. All of these differences will influence the way in which consumers of "light" cigarettes will respond in the market place.

Respectfully submitted this 29th day of June, 2005. I reserve the right to amend or modify any opinions offered in this report based on additional information I may review.


David W. Stewart, Ph.D.